

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA *et al.*, *ex rel.*
DAVID KESTER,

Plaintiffs,

v.

NOVARTIS PHARMACEUTICALS
CORPORATION *et al.*,

Defendants.

x

: 11 Civ. 8196 (CM) (JCF)

: ~~PENDING~~ ORDER

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WHEREAS, on April 19, 2013, plaintiff the United States (the “Government”) filed a notice of partial intervention and a complaint-in-intervention in this action with respect to the *qui tam* relator’s allegations concerning kickback schemes involving the drug Myfortic;

WHEREAS, on October 30, 2013, the Government filed a notice of partial intervention and partial declination to (i) to intervene on the relator’s claims against Novartis Pharmaceuticals Corp. (“Novartis”) based on allegations concerning a kickback scheme involving Novartis and co-defendant BioScrip, Inc. (“BioScrip”) in relation to the Novartis drug Exjade, and (ii) to decline to intervene on the relator’s claims against Novartis based on kickback allegations concerning three drugs other than Exjade and Myfortic;

WHEREAS, on January 6, 2014, the Government filed a notice of partial intervention and partial declination (i) to intervene on the relator’s claims against BioScrip in relation to Exjade, and (ii) to decline to intervene against the other defendants named by the relator, including co-defendant Accredo Health Group (“Accredo”);

WHEREAS, on January 8, 2014, the Court entered an Unsealing Order to unseal this action and also providing, *inter alia*, that, “for good cause,” the Government “is entitled to intervene in [any] part of the action [as to which it has declined to intervene] at any time,” Unsealing Order at ¶ 8 [Dkt. 44];

WHEREAS, on April 30, 2015, the Court approved and entered (i) an Order authorizing the Government to intervene against Accredo, and (ii) a Stipulation and Order of Settlement and Dismissal among the Government, the relator, and Accredo to resolve all claims against Accredo in this action;

WHEREAS, on April 30, 2015, the Government filed a Notice of Election to Further Intervene in Part, stating that the Government has elected, for good cause and pursuant to 31 U.S.C. § 3730(c)(3) and the Unsealing Order, to further intervene in the relator's claims against Novartis based on the allegations that, between March 2008 and March 2012, Novartis engaged in a patient referral allocation scheme for Exjade under which Novartis agreed with Accredo that Novartis would give Accredo additional patient referrals and related benefits in return for achieving the highest refill percentage for Exjade patients as compared to the refill percentages among Exjade patients at the other two EPASS pharmacies and that this scheme caused the submission of false claims to Medicare and Medicaid in violation of the False Claims Act and the Anti-Kickback Statute;

WHEREAS, on April 30, 2015, the Government filed a Statement in Support of Its Election to Further Intervene in Part, which (i) states that the Government does not intend to further amend its complaint, assert new claims, advance new allegations; and (ii) sets forth the basis for the Government's position that, under 31 U.S.C. § 3730(c)(3) and the Unsealing Order, "good cause" exists for the Government to further intervene against Novartis; and

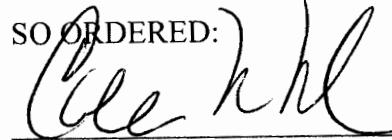
WHEREAS, having considered the Government's filings in support of its election to further intervene against Novartis;

IT IS HEREBY ORDERED, that:

1. Good cause for intervention exists under 31 U.S.C. § 3730(c)(3) and the Unsealing Order.

2. The Government's is permitted, pursuant to 31 U.S.C. § 3730(c)(3) and the Unsealing Order, to further intervene in part against Novartis is accordingly granted.

Dated: New York, New York
May 6, 2015

SO ORDERED:


HONORABLE COLLEEN MCMAHON
UNITED STATES DISTRICT JUDGE